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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,573	08/22/2003	Herve J. Cantave	CAN001-183	8215

7590 07/25/2006  
DIEDERIKS & WHITELAW, PLC  
12471 Dillingham Square, # 301  
Woodbridge, VA 22192

EXAMINER
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KORNAKOV, MICHAIL

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/645,573

Applicant(s)

CANTAVE ET AL.

Examiner

Michael Kornakov

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1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7,9-11,13 and 15 is/are rejected.
- 7) ☒ Claim(s) 4,6,8,12,14,16 and 17 is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>08/22/2003</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicants' election with traverse of claims 1-17 in the reply filed on 05/12/2006 is acknowledged. The traversal is on the ground that it would not be undue burden upon the Examiner to search both the claims related to apparatus and the claims related to method inventions. This is not found persuasive. Applicants' attention is drawn to the fact that the search for method claims requires the identification of processing steps, while the search for apparatus claims requires the identification of structural elements. The method and apparatus claims are differently classified, which introduces additional search burden. Applicants' arguments that the search of one invention must necessarily result in a search for the other one has been considered, but is not found persuasive insofar as the searches are not co-extensive and additional search would of necessity be required for the combination of inventions. Therefore, the restriction requirement is still deemed proper and made final.
2. Claim 18, 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Claims 1-17 are currently examined on the merits.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 7, 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to the shield member claims 7 and 15 recite the limitation "the closed position". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

6. Claims 1, 5, 9, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Mercer (U.S. 3,019,802).

Mercer teaches a dishwasher comprising the structural elements identical to those instantly claimed and specifically a dispenser cup 48 having pivotally mounted cover plate 60. Regarding the limitation of the instant claim 1, reciting "a shield member being spaced from and extending across at least a portion of the lid to assure the lid is not obstructed by kitchenware in the dishwasher when moving from the closed position to the dispensing position during a wash cycle", and the limitation of the instant claim 9, reciting "a shield member extending across at least a portion of the dispensing assembly directly adjacent the lid, said shield member providing the lid with unobstructed movement between the closed and dispensing positions", Mercer teaches support racks 20 for table ware to be cleaned, said racks are conventionally designed to hold and prevent any obstruction caused by kitchenware inside the dishwasher (reads on "a shield member", as instantly claimed), the racks being positioned in close

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proximity to the cover plate 60 (Fig.1). Therefore, all the structural limitations of the claimed dishwasher are met by Mercer.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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10. Claims 7, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mercer .

Regarding claims 7 and 15, Mercer does not specifically indicate a latch. However, the latch is conventionally utilized in the art for retaining the lid and/or the rack in closed position and it would be obvious to use such latch for the safe operation of the dishwasher of Mercer.

11. Claims 2, 3, 10, 11, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mercer in view of Guth (U.S. 3,850,185).

Regarding the instant claims 2, 3, 10, 11, Mercer does not specifically indicate the structural elements of the rack, as instantly claimed. However, the dishwashing rack conventionally comprises such elements, as can be seen from Fig. 1 of Guth.

Therefore, one skilled in the art would have found obvious to utilize the conventional racks of Guth in order to support kitchenware in the teaching of Mercer with the reasonable expectation of success.

***Allowable Subject Matter***

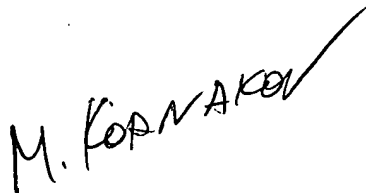
12. Claims 4, 6, 8, 12, 14, 16, 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: none of the prior art of current record anticipates or suggests fairly a dishwasher with the combination of structural elements as instantly claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kornakov whose telephone number is (571) 272-1303. The examiner can normally be reached on 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "M. Kornakov", with a long, sweeping horizontal stroke extending to the right.

Michael Kornakov  
Primary Examiner  
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07/20/2006

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